IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3439 OF 1997

Babasaheb Nana Chogule ...Applicant
vs.
State of Maharashtra and Anr. ...Respondents

Mr.G.H.Keluskar for the Applicant
Mr.K.V.Saste,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 22,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. Considering the limited relief which is sought in this Petition, it can be heard in absence of Respondent Nos.2 to 5. The Respondent Nos.2 to 5 are the original accused. The said accused persons have been prosecuted at the instance of the Respondent No.1-State for offence punishable under sections 394, 397, 506 read with Section 34 of the Indian Penal Code. By Judgment and Order dated 24th September 1997, the learned Additional Sessions Judge acquitted the accused persons.

2. This Application is filed by the Applicant who at the relevant time was the Sub Divisional Police Officer. He was the Investigating Officer for the said offence. The limited prayer made in this Appliction is for expunging the remarks made in paragraph Nos.17 to 19 of the Judgment made against the Applicant.

3. In paragraph No.17 the objection is to the following remarks:

> "17. Mr.Chaughule, Dy.S.P. has held investigation in this case. He has also not exercised due care for collecting the required evidence and documents in this case. He says that he has deputed one of his subordinate to the reservation office of V.T.Station to collect the list of passengers who were travelling by Calcutta Mail by that compartment in that fateful night, that Policeman could not get it and therefore the investigation Officer has not made any further efforts to get the list of passengers so that he could interrogate of examine those persons passengers to find out whether any such incident has taken place..."

In paragraph No.18 of the Judgment the learned Additional Sessions Judge observed thus :

> "....In such circumstances, it was necessary to make serious efforts to examine the witnesses i.e. passengers travelling by that compartment but has not been done."

In paragraph No.19 the learned Judge has observed thus :

> "....Though Investigating Officer Mr.Chaughule says that police constable Chandrakant Kamble has made a false entry regarding the attendance of accused Nos.3 and 4 on duty. He says that no disciplinary action has been taken against the constable Chandrakant Kamble. In such circumstances, the benefit of doubt certainly goes in favour of the accused 3 and 4 as well as accused Nos.1 and 2."

4. After having heard the learned Advocate for the Applicant and the learned A.P.P. for State, I find that a case is made out for expunging some of the remarks. Perusal of the judgment of the learned Sessions Judge shows that number of witnesses were examined by the prosecution. Some of the witnesses have been declared hostile.

5. The learned Judge has found fault with the Applicant on the ground that he has not taken due care while collecting the evidence. The alleged offence has been committed on 21st July 2005 in Mumbai-Calcutta mail. The complainant was a passenger in the said train along with his cousin. Four persons claiming to the Constables came in the night at 9.00 p.m. and asked the complainant to open the bag carried by the complainant. As the key of the bag was with the cousin of the

complainant, he could not open the bag. By the time next station arrived, the complainant obtained key from his cousine. He found that the Constables were sitting with the bag. The bag was opened. A Constable took out a sum of Rs.7400/- from the bag and kept it in his own pocket and after slapping the complainant, Police Constables went away. Thereafter, an offence was registered. It was found that the accused persons were Constables attached to Kalyan Railway Police Station.

6. The learned Judge has found fault with the Applicant for not getting the list of the passengers who were travelling by the said train. He also found fault with the prosecution for not examining the passengers. He has found fault with the Applicant for not taking the disciplinary action against the accused Nos.3 and 4.

7. The learned Judge has observed that the Applicant has stated in evidence that he had called for the list of the passengers through Policemen assisting the investigation but the list of the passengers could not be made available to him and that is the reason why the passengers could not be examined. In my view, there was no warrant for making observation that the Applicant has not exercised due care while collecting the evidence. There is also no reason on record to observe that serious efforts were not made by him.

So far as third observation is concerned, the learned Judge ignored that initiation of Departmental Enquiry has nothing to do with the prosecution. In any event, there was nothing on record to show that that the Applicant was empowered to initiate Departmental Enquiry against the accused but he did not initiate it. In my view, the learned Judge ought not to have make remarks against the Applicant for which there was no factual foundation.

8. Hence, the Application deserves to be partly allowed. It is directed that the remarks in the Judgment which are mentioned in paragraph No.3 above are ordered to be expunged.

JUDGE